

**PUBLIC PROTECTION CABINET**  
**Department of Alcoholic Beverage Control**  
**(Repealer)**

**804 KAR 9:051. Repeal of 804 KAR 9:010, 804 KAR 9:040, and 804 KAR 9:050.**

RELATES TO: KRS 241.060, 241.065, 243.240, 243.250

STATUTORY AUTHORITY: KRS 241.060(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 241.060(2) authorizes the board to limit the number of licenses of each kind or class to be issued in this state or any political subdivision. This administrative regulation repeals 804 KAR 9:010, 804 KAR 9:040, and 804 KAR 9:050, which limit the number of available quota retail package licenses and quota retail drink licenses. By repealing these administrative regulations, quotas for licenses will exist only in counties containing a first class city and in those cities that voted to become wet pursuant to a local option election under KRS 242.1292.

Section 1. The following administrative regulations are hereby repealed:

- (1) 804 KAR 9:010, Quota retail license limits for counties;
- (2) 804 KAR 9:040, Quota retail package licenses; and
- (3) 804 KAR 9:050, Quota retail drink licenses.

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 14, 2017

FILED WITH LRC: December 14, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2018 at 10:00 a.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen B. Humphress, General Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email [Steve.Humphress@ky.gov](mailto:Steve.Humphress@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Stephen B. Humphress

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 804 KAR 9:010, 804 KAR 9:040, and 804 KAR 9:050.

(b) The necessity of this administrative regulation: The Board previously promulgated the subject regulations to create quotas (a limited number of licenses) for only two (2) types of licenses: quota retail package licenses and quota retail drink licenses. The number of licenses was limited based on the population of a given community. For the 40+ other existing license types administered by the Department, there is no similar limitation and economic factors have determined the number of businesses that a community can support to prevent the oversaturation of licensed alcohol businesses in a community. In some larger metropolitan areas, market competition has already reduced the number of competing businesses below existing available quotas so that quotas serve no purpose in those jurisdictions (e.g., Louisville). Since the 1980s, the legislature has enacted laws that allow many business types, like restaurants and hotels, to obtain nonquota drink licenses and the lack of quotas has not resulted in oversaturation. In sum, market competition and market forces serve to determine the number of licensed businesses that can survive in a given geographic area. This same rationale applies to the repeal of outdated retail quota package and drink licenses.

This administrative regulation repeals the existing quota regulations to allow broader market competition for businesses holding retail quota package and drink licenses in all Kentucky communities, excepting counties containing a first class city (Jefferson County, See KRS 241.065) and those cities that voted to become wet pursuant to a local option election under KRS 242.1292 (Ashland). It is anticipated that eliminating quotas may encourage entrepreneurship, foster creativity for new business models, and create jobs. The board believes that market forces rather than arbitrary quota limits should determine the number of businesses competing in a community.

The current quota system also creates a disparate treatment of the types of alcoholic beverages: distilled spirits, wine, and malt beverages. There are no quotas for the license types that authorize malt beverage package sales and malt beverage drink sales. Dissimilarly, there are quotas for the license types that authorize distilled spirits and wine package sales and distilled spirits and wine drink sales. Thus, elimination of the quota system accomplishes equitable treatment of all alcoholic beverage licensees.

The existing quota system burdens the department's limited licensing staff and resources. Although the state is becoming progressively more wet, the department's resources have not kept pace with increasing responsibilities. To meet its regulatory obligations, the department is taking steps to streamline processes and eliminate unnecessary administrative tasks. The quota system conflicts with these objectives because it creates an entirely separate licensing scheme for certain applicants, utilizes complicated processes for tracking and issuance, and requires additional tasks not needed for all other license types. Licensing staff must check yearly population figures against ratios to set quotas, maintain additional records of quota licenses, add or subtract quotas as the population fluctuates, place advertisements in newspapers for vacancies at considerable costs, request and receive economic impact studies from competing quota license candidates, and answer many public calls about the quota application process. The selection process for quota licenses takes several months. Newly wet communities are often anxious for these new businesses to open immediately. Elimination of the quota system will streamline and simplify department licensing processes and eliminate unnecessary administrative tasks for prompt issuance of all licenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations, and KRS 241.060(2) allows the board to use its discretion to determine whether any limitations need to be placed on the number or type of licenses issued in a territory. The applicable legal jurisprudence recognizes that the board may increase the number of quota licenses even though it may adversely affect existing licensees' competitive position since it is a normal business risk

that they assume. See *Lexington Retail Beverage Dealers Ass'n v. Department of Alcoholic Beverage Control Bd.*, 303 S.W.2d 268, 270 (Ky. 1957).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of these administrative regulations will eliminate unnecessary burdens to commerce and market entry by removing the ratio-determined number of quota licenses available in a community. By doing so, the marketplace and competition will determine how many licenses that a community can support. Removing quotas for these license types will increase the efficiency of the licensing staff, whose duties would no longer include: (1) checking population figures to set ratios; (2) adding or subtracting quotas as the population fluctuates; (3) placing advertisements in newspapers; (4) adhering to a more complicated licensing process only applicable to quota license applications; and (5) fielding numerous questions from the public, the answers to which often serve only to confuse the matter. It will also ease the burden on the local alcoholic beverage control administrators, since they will no longer have to consult the department to determine how many licenses they may issue. Finally, it will allow many businesses the opportunity to compete since artificial market barriers will no longer exist.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Alcoholic Beverage Control is impacted by this administrative regulation. Local governments, current quota licensees, and prospective applicants for quota licenses are also affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Although regulated entities will not have to take any actions to comply with the repeal of these regulations, current licensees who purchased quota licenses from others in the past will not be able to sell and transfer those licenses. The applicable legal jurisprudence recognizes that current licensees have no right to be free from competition and that they assume the normal business risk that the board may increase the number of licenses which adversely affects their competitive position. See *Lexington Retail Beverage Dealers Ass'n v. Department of Alcoholic Beverage Control Bd.*, 303 S.W.2d 268, 270 (Ky. 1957).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to repeal these administrative regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The department will benefit from increased licensing staff efficiency and local governments' alcoholic beverage control administrators will benefit from a lightened work responsibility when they no longer have to consult with the department to determine how many licenses are available. Finally, this repeal will open the marketplace to competition and allow more businesses and new business models to operate. Increased business will result in additional

licensing fees to the department as well as local governments and will offer more shopping choices and competitive prices for the consumer.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no anticipated costs associated with the implementation of this repealer.

(b) On a continuing basis: There are no anticipated costs associated with the implementation of this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed to implement and enforce the repeal of these administrative regulations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no anticipated increase in fees or funding necessary to repeal these administrative regulations.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative regulation repealer does not directly or indirectly increase any fees; however, the department and local governments may see an increase in the number of fees generated from additional license applicants.

(9) TIERING: Is tiering applied? No tiering is applied because this regulation repeals earlier regulations and applies equally to all regulated entities.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control and local governments are impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 241.060(2) allows the board to use its discretion to determine whether any limitations need to be placed on the number or type of licenses issued in a territory.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is unknown how much revenue may be generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is unknown how much revenue may be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? There are no costs to repeal these administrative regulations.

(d) How much will it cost to administer this program for subsequent years? There are no costs to repeal these administrative regulations.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

Revenues (+/-):

Expenditures (+/-):

Other Explanation: It is unknown how many additional quota license applicant fees the department and local governments may receive as a result of removing the quota ratio.